

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of

BASF T.O.V.,

For an Order Pursuant to 28 U.S.C. § 1782 to Conduct
Discovery for Use in Foreign Proceedings

Case No. 22 Misc. _____

***EX PARTE APPLICATION OF BASF T.O.V.
FOR DISCOVERY PURSUANT TO 28 U.S.C. § 1782***

Applicant BASF T.O.V., by and through its undersigned counsel, Kellner Herlihy Getty & Friedman LLP, along with a Memorandum of Law, the Declaration of Grygoriy Sytenko, dated December 31, 2021 and the Declaration of Eugene Getty dated January 10, 2022 and accompanying Exhibits, respectfully submits this Application for judicial assistance pursuant to 28 U.S.C. § 1782, in obtaining documentary and testimonial evidence for use in a foreign proceeding. The Applicant seeks evidence from: Citibank, N.A.; The Bank of New York Mellon; Société Générale, New York Branch; HSBC Bank USA, N.A.; BNP Paribas USA; JPMorgan Chase Bank, N.A.; Barclays Bank PLC; Deutsche Bank Trust Co. Americas; The Bank of Nova Scotia, New York Agency; UBS AG; Bank of America, N.A.; Standard Chartered Bank US; Commerzbank AG, New York Branch; and The Clearing House Payments Company, LLC (together the “Respondents”), each of which is found in this District.

Applicant satisfies each of the three statutory requirements set forth in 28 U.S.C. § 1782. *First*, the Respondents from whom discovery is sought are each found within the Southern District of New York. *Second*, the discovery sought by Applicant is “for use” in connection with pending and contemplated claims within the pending proceedings described in the accompanying Declaration of Grygoriy Sytenko against PE Cherkes Trading House (f/k/a PE “Firma Bershad Agroplus”) (and its affiliates and officers, including Mr. Zulynskiy Stepan Olegovich),

Agrarian Alliance LLC, STOV Dibrova I K, and Motoviltex LLC (the “Ukrainian Defendants”) before the Commercial Court of Dnipropetrovsk Oblast and the Courts of Vinnytsia, Ukraine (“Ukrainian Proceedings”). *Third*, Applicant is an interested person within its capacity as creditor in the Ukrainian Proceedings.

Further, each of the discretionary factors established in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004), militate in favor of granting this Application. *First*, there is no expectation that any of the Respondents from whom discovery is sought will be participants in the Ukrainian Proceedings and, as such, this Application constitutes the only practical and timely method for obtaining the needed evidence for use there. *Second*, there is no indication that the foreign tribunal would be unreceptive to the evidence. *Third*, the documentary and testimonial evidence sought through the instant Application would likely be admissible in the Ukrainian Proceedings and does not otherwise circumvent any proof-gathering restriction under the laws of Ukraine. *Fourth*, the discovery sought through this Application is not unduly intrusive or burdensome because it is of limited scope. The proposed requests to the Respondents seek limited records relating to wire transactions for which the Respondents were involved as originating bank, beneficiary bank, intermediate or correspondent bank to CHIPS, Fedwire, or where the Respondents otherwise facilitated interbank funds transfers related to the Ukrainian Defendants, as well as documents relating thereto, for the limited period beginning January 1, 2018 to the present.

Accordingly, for the reasons described in the accompanying Memorandum of Law, the Declaration of Grygoriy Sytenko, and the Declaration of Eugene Getty and accompanying Exhibits, Applicant respectfully requests that the Court issue an Order in the proposed or substantially similar form as filed with this Application (1) granting judicial assistance pursuant

to 28 U.S.C. § 1782, (2) authorizing Applicant to serve subpoenas in substantially similar form as attached hereto as Exhibit A, and (3) waiving service by Applicant of the Application on the Ukrainian Defendants, the Discovery Targets¹ and the Respondents, and of the Order and subpoenas on the Ukrainian Defendants and the Discovery Targets.

Dated: January 10, 2022

Respectfully submitted,

Eugene F. Getty

By: _____
Eugene Getty

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¹ As defined in the Declaration of Grygoriy Sytenko, dated December 31, 2021.